

The Honorable Benjamin Settle

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY JAMES M.
PETERS, DETECTIVE SHARON KRAUSE,
SERGEANT MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE COUNTY
OF CLARK, SHIRLEY SPENCER and JOHN
DOES ONE through TEN,

Defendants.

No. 11-5424 BHS

DEFENDANT CLARK COUNTY'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR CONTINUANCE
PURSUANT TO RULE 56(d) AND
REPLY

NOTED FOR: Friday, June 22, 2012

COMES NOW the Defendant Clark County and hereby joins in the opposition to
Plaintiffs' motion for a continuance pursuant to Fed. R. Civ. P. 56(d) as submitted by Defendant
Sharon Krause (Dkt. 83), Shirley Spencer (Dkt. 82), and Defendant Michael Davidson (Dkt. 80).
The Plaintiffs' motion should be denied because they have failed to meet their burden under Rule
56(d).

DEFENDANT CLARK COUNTY'S OPPOSITION
TO PLAINTIFF'S MOTION FOR CONTINUANCE
PURSUANT TO RULE 56(d) AND REPLY - 1

CLARK COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
604 W EVERGREEN BLVD • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2478 (OFFICE) / (360) 397-2184 (FAX)

1 The basis of Clark County's motion to dismiss the Plaintiffs' state claims include that
2 those claims are time barred and that the Plaintiffs completely failed to file a claim as required
3 by Chapter 4.96 RCW. There has been no showing as to what discovery is necessary to respond
4 to the County's motion on these bases. No further discovery is necessary to resolve these issues
5 and the Plaintiffs' motion should be denied.
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7 With respect to the Plaintiff's defamation claim, the County's motion is additionally
8 supported by a claim of absolute privilege. That privilege extends to attorneys acting within the
9 duties of their office. The Plaintiff has made no showing as to what additional discovery is
10 necessary to respond to this claim of absolute privilege. The Plaintiff's motion should be denied.
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12 The County's motion is also supported by its argument that the Plaintiff is collaterally
13 estopped from relitigating certain issues related to his arrest and incarceration. While the
14 Plaintiff makes legal arguments challenging the County's position, he has not established that
15 additional discovery is necessary to respond to this predominantly legal issue.
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17 Finally, the County's motion is based upon the lack of any basis for a finding of
18 municipal liability. Again, the Plaintiff makes legal challenges to the County's position, but has
19 not met its burden of establishing a need for a continuance to discovery factual matters related to
20 the County's defense.
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29 DEFENDANT CLARK COUNTY'S OPPOSITION
TO PLAINTIFF'S MOTION FOR CONTINUANCE
PURSUANT TO RULE 56(d) AND REPLY - 2

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(360) 397-2478 (OFFICE) / (360) 397-2184 (FAX)

1 For these reasons and for the reasons set forth in the County's motion for summary
2 judgment, this Court should grant summary judgment in favor of the County and dismiss the
3 Plaintiff's claims against it. The Plaintiff's motion under Rule 56(d) should be denied.
4

5 Respectfully submitted this 22nd day of June, 2012.

6 /s/ E. Bronson Potter
7 Chief Civil Deputy
8 Of Attorneys for Defendants Clark County, Clark County
9 Prosecutor's Office and Clark County Sheriff's Office
10 Clark County Prosecuting Attorney, Civil Division
11 PO Box 5000
12 Vancouver WA 98666-5000
13 Telephone: (360) 397-2478
14 Facsimile: (360) 397-2184
15 Bronson.Potter@clark.wa.gov
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DECLARATION OF SERVICE

I, Mindy Lamberton, hereby certify that on the 22nd day of June, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

Attorneys for Plaintiffs:

Daniel Davies
Davis Wright Tremaine LLC
1201 Third Avenue #2200
Seattle WA 98101
dandavies@dwt.com

Kathleen T. Zellner
Kathleen T. Zellner & Associates
1901 Butterfield Suite 650
Downers Grove, IL 60515
Kathleen.zellner@gmail.com

Douglas H. Johnson
Kathleen T. Zellner & Associates
1901 Butterfield Suite 650
Downers Grove, IL 60515
Dhjohnson43@aol.com

Attorney for Shirley Spencer:

William Dunn
Dunn Law Office
PO Box 1016
Vancouver WA 98665
dunnwh@pacifier.com

Gary Allan Western
Wilson Smith Cochran & Dickerson
901 Fifth Avenue, Suite 1700
Seattle WA 98164-2050
western@wscd.com

1 *Attorneys for James M. Peters:*

2 Patricia C. Fetterly
3 Daniel J. Judge
4 Attorney General of Washington
5 PO Box 40126
6 Olympia WA 98504-0126
7 danielj@atg.wa.gov
8 patriciaf1@atg.wa.gov

9 *Attorney for Michael Davidson*

10 Jeffrey A.O. Freimund
11 Freimund Jackson Tardiff & Benedict Garrett
12 711 Capitol Way South, Suite 602 and 605
13 Olympia WA 98501
14 Jefff@fjtlaw.com

15 *Attorneys for Sharon Krause*

16 Guy Bogdanovich
17 Law Lyman Daniel Kamerrer & Bogdanovich
18 PO Box 11880
19 Olympia WA 98508
20 gbogdanovich@lldkb.com

21 DATED this 22nd day of June, 2012.

22 s/Mindy Lamberton, Legal Assistant
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